

E-filing

FILED

OCT 11 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MORGAN, LEWIS & BOCKIUS LLP
FRANKLIN B. GOWDY (SBN 47918)
MOLLY M. LANE (SBN 149206)
BRETT M. SCHUMAN (SBN 189247)
One Market, Spear Street Tower
San Francisco, CA 94105-1126
Tel: 415.442.1000
Fax: 415.442.1001

Attorneys for Protego Networks LLC f/k/a Protego
Networks, Inc. (Plaintiff, Counterclaim Defendant and
Counterclaimant in Reply) and Counterclaim Defendants
Imin Lee, Partha Bhattacharya and Yu Liao

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PROTEGO NETWORKS, INC., a
Delaware corporation,

Plaintiff,

v.

DANIEL N. ZENCHELSKY,

Defendant.

DANIEL N. ZENCHELSKY,

Counterclaimant,

v.

PROTEGO NETWORKS LLC, PARTHA
BHATTACHARYA, IMIN LEE, AND YU
LIAO,

Counterclaim Defendants.

PROTEGO NETWORKS LLC,

Counterclaimant in Reply,

v.

DANIEL N. ZENCHELSKY,

Counterclaim Defendant in Reply.

Case No. C05-00464 MJJ

**STIPULATION AND [PROPOSED] ORDER
TO EFFECTUATE SETTLEMENT**

1 Counterclaimant Daniel Zenchelsky ("Zenchelsky") and Counterclaim Defendants
2 Protego Networks LLC ("Protego"), Imin Lee, Partha Bhattacharya, and Yu Liao (together,
3 "Counterclaim Defendants") file this stipulation and proposed order to effectuate a tentative
4 settlement of this litigation.

5 **RECITALS**

6 WHEREAS, on or about July 6, 2005, Zenchelsky obtained the following registration
7 certificates for works that he claimed to have either authored or co-authored: Description of
8 Software Code and Combined Hardware Architecture- Version 4 (TXu1-247-626); Description
9 of Software Code and Combined Hardware Architecture- Version 3 (TXu1-247-632);
10 Description of Software Code and Combined Hardware Architecture- Version 2 (TXu-1-247-
11 628); Description of Software Code and Combined Hardware Architecture- Typology Version 2
12 (TXu1-247-630); Description of Software Code and Combined Hardware Architecture-
13 Typology (TXu-1-247-627); Description of Software Code and Combined Hardware
14 Architecture and Marketing Requirements; Description of Software Code and Combined
15 Hardware Architecture (TXu1-247-629); Nimda Worm Scenario; and Description of Software
16 Code and Combined Hardware Architecture (TXu1-247-631).

17 WHEREAS, in his operative Answer and Third Amended Counterclaim, Zenchelsky
18 alleges in a seventh cause of action that Counterclaim Defendants have infringed his purported
19 copyrights;

20 WHEREAS, in their Reply to Third Amended Counterclaim, Counterclaim Defendants
21 interposed several affirmative defenses to Zenchelsky's copyright infringement claim, including,
22 but not limited to, invalidity of the copyright registrations, lack of originality, and fraud on the
23 copyright office by Zenchelsky;

24 WHEREAS, Zenchelsky in his response to the counterclaim has denied all allegations
25 of lack of originality and fraud;

26 WHEREAS, Zenchelsky and Counterclaim Defendants have entered into a settlement
27 agreement resolving this litigation. In that agreement, Zenchelsky and Counterclaim Defendants
28 have agreed, among other things, that: (1) the registration certificates identified above should be

1 canceled; (2) the deposit copies of the works submitted by Zenchelsky to the Copyright Office are
 2 claimed by Protego to contain confidential information and trade secrets; and (3) the Copyright
 3 Office should deliver the deposit copies of the works submitted by Zenchelsky to counsel for
 4 Protego, or treat the deposit copies as confidential and proprietary material;

5 WHEREAS, Zenchelsky and Counterclaim Defendants understand that an Order from
 6 this Court directing the Copyright Office to take the aforementioned actions is required.

7 STIPULATION

8 WHEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between
 9 Zenchelsky and Counterclaim Defendants, through their respective counsel, that:

10 1. The Court should declare that Zenchelsky's registrations, and asserted copyrights, in
 11 the works entitled Description of Software Code and Combined Hardware Architecture- Version 4
 12 (TXu1-247-626); Description of Software Code and Combined Hardware Architecture- Version 3
 13 (TXu1-247-632); Description of Software Code and Combined Hardware Architecture- Version 2
 14 (TXu-1-247-628); Description of Software Code and Combined Hardware Architecture- Typology
 15 Version 2 (TXu1-247-630); Description of Software Code and Combined Hardware Architecture-
 16 Typology (TXu-1-247-627); Description of Software Code and Combined Hardware Architecture
 17 and Marketing Requirements; Description of Software Code and Combined Hardware Architecture
 18 (TXu1-247-629); Nimda Worm Scenario; and Description of Software Code and Combined
 19 Hardware Architecture (TXu1-247-631) are invalid and should be canceled by the Copyright Office.

20 2. The Court should direct the Copyright Office to ~~return to Protego's counsel, Brett~~
~~treat the deposit copies as if they had been filed~~
 21 ~~Schuman of Morgan, Lewis & Bockius LLP, Spear Street Tower, One Market, San Francisco,~~
~~pursuant to Copyright Office, Circular 61, pertaining~~
 22 ~~California 94105, the deposit copies of all works submitted by Zenchelsky with the copyright~~
~~to the registration of "computer programs containing~~
 23 ~~applications for the registrations identified in the preceding paragraph or, at a minimum, direct the~~
~~Trade Secrets, mll~~
 24 Copyright Office to treat the deposit copies as confidential and proprietary material.

25 **SO STIPULATED.**

1 Dated: August 18, 2006

MORGAN, LEWIS & BOCKIUS LLP

2
3 By 
4 Brett M. Schuman

5 *Attorneys for Protego Networks LLC f/k/a Protego*
6 *Networks, Inc. (Plaintiff, Counterclaim Defendant*
7 *and Counterclaimant in Reply) and Counterclaim*
8 *Defendants Imin Lee, Partha Bhattacharya and Yu*
9 *Liao*

10 Dated: August 18, 2006

KANE AND SILVERMAN P.C.

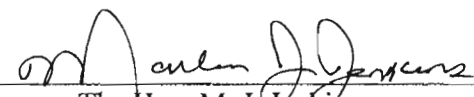
11
12 By 
13 Howard G. Silverman

14 *Attorneys for Counterclaimant and Counterclaim*
15 *Defendant Daniel N. Zenchelsky*

16 **PROPOSED ORDER**

17 **IT IS SO ORDERED.**

18 Dated: 10/11, 2006

19 
20 The Hon. M. J. Jenkins
21 Judge of the United States District Court